

CPS-200

April 20, 2006

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT
C.A. No. **05-5355**

IN RE: LUIS MANUEL RODRIGUEZ

Present: BARRY, SMITH AND NYGAARD, CIRCUIT JUDGES

Submitted is petitioner's application for leave to file a second or successive motion to vacate sentence under 28 U.S.C. § 2255

in the above-captioned case.

Respectfully,
Clerk

MMW/LLB/lwc

ORDER

The foregoing application for leave to file a second or successive motion to vacate sentence under 28 U.S.C. § 2255 is denied. Petitioner does not allege any newly discovered evidence. In addition, United States v. Booker, 543 U.S. 220 (2005), has not been made retroactive to cases on collateral review by the Supreme Court and cannot be a basis for a second or successive section 2255 motion. See In re Olopade, 403 F.3d 159 (3d Cir. 2005). Dodd v. United States, 125 S. Ct. 2478 (2005), does not provide a basis for relief on petitioner's Booker claim. See Dodd, 125 S. Ct. at 2483 (recognizing the narrow restrictions imposed by 28 U.S.C. § 2255 ¶ 8(2) on filing a second or successive section 2255 motion). As to his other claim, the Supreme Court dismissed the writ as improvidently granted in Medellin v. Dretke, 544 U.S. 660 (2005), and it has not made the International Court of Justice judgment to which petitioner refers retroactive to cases on collateral review.

By the Court,

/s/ D. Brooks Smith
Circuit Judge

Dated: May 11, 2006

lwc/cc: Mr. Luis M. Rodriguez
Christine A. Sanner, Esq.

FILED

MAY 11 2006

CLERK U.S. DISTRICT COURT
WEST PHILADELPHIA, PENNSYLVANIA